



Report to the Auburn City Council

Action Item	15
Agenda Item No.	
City Manager's Approval	

To: Mayor and City Council Members
From: Lance E. Lowe, AICP, Associate Planner *LEL*
Date: October 22, 2012
Subject: A Continued Public Hearing to Consider adding Chapter 72.31 *et. seq.* of the Auburn Municipal Code entitled Regulation of Mobile Food Vendors in the Public Right of Way. The proposed new chapter will establish standards for the operation of Mobile Food Vendors, in the City's Public Right of Way.

The Issue

Should the City Council adopt an ordinance amending the Auburn Municipal Code by adding Chapter 72.31 *et. seq.* to regulate Mobile Food Vending in the City's Public Right-of-Way?

Recommended Motion (Approval)

Based upon direction by the City Council at the September 24, 2012, City Council public hearing, staff has prepared two ordinances for City Council consideration (**Alternatives A & B**). Staff recommends that the City Council take one of the following actions:

Alternative A (as revised by City Council)

- A. By Motion, introduce and hold a first reading, by title only, of an ordinance (**Exhibit A**), as amended by the City Council, amending the Auburn Municipal Code by adding Chapter 72.31 *et. seq.* entitled Regulation of Mobile Food Vendors in the Public Right of Way, which includes the following actions:
1. Adoption of a Categorical Exemption prepared for the Mobile Food Vending Ordinance as the appropriate level of environmental review in accordance with Section 15311 (Accessory Structures) and Section 15304(e) (Minor Alterations to Land) of the CEQA Guidelines;
 2. Adoption of Findings of Fact for approval of the Mobile Food Vending Ordinance, as presented in the staff report; and,
 3. Approval of the Mobile Food Ordinance as presented in this staff report.
- B. Direct Staff to Initiate Proceedings to Amend the Levy of Assessments for the Downtown Business Improvement District (BID) to include Mobile Food Vending pursuant to the City's fee schedule (**Exhibit C**).

Alternative B (as presented on September 24, 2012)

- A. By Motion, introduce and hold a first reading, by title only, of an ordinance as presented on September 24, 2012 (**Exhibit B**), amending the Auburn Municipal Code by adding Chapter 72.31 *et. seq.* entitled Regulation of Mobile Food Vendors in the Public Right of Way, which includes the following actions:
1. Adoption of a Categorical Exemption prepared for the Mobile Food Vending Ordinance as the appropriate level of environmental review in accordance with Section 15311 (Accessory Structures) and Section 15304(e) (Minor Alterations to Land) of the CEQA Guidelines;
 2. Adoption of Findings of Fact for approval of the Mobile Food Vending Ordinance, as presented in the staff report; and,
 3. Approval of the Mobile Food Vending Ordinance as presented in this staff report.

Background

On September 24, 2012, the City Council held a duly noticed public hearing to consider an Ordinance amending the Auburn Municipal Code by adding Chapter 159.176 *et. seq.* entitled Regulation of Mobile Food Vendors in the Public Right of Way. The proposed new chapter will establish standards for the operation of Mobile Food Vendors, in the City's Public Right of Way.

Subsequent to the City Council meeting on September 24, 2012, the Community Development Department staff provided an additional correspondence to the representatives of the Old Town, Downtown and Highway 49 business organizations. To date, staff has provided three notifications to the respective business organizations (**Attachments 2, 3 and 4**). The most recent correspondence included a mailing to restaurateurs in the Old Town and Downtown Business Improvement District. As of the date of this staff report, no comments have been received from the Old Town, Downtown or Highway 49 business associations or restaurateurs.

Based upon direction by the City Council on the Mobile Food Vending Ordinance, on private property, staff incorporated the same revisions in the Regulation of Mobile Food Vendors in the Public Right of Way, where applicable, to ensure consistency between the two ordinances. The revisions to the Regulation of Mobile Food Vendors in the Public Right of Way ordinance are outlined below in the Analysis Section of this staff report.

Also, the City Attorney has provided a memorandum pertaining to the City Authority to Regulated Mobile Food Vendors (**Attachment 6**).

Analysis

As directed by the City Council, staff has prepared a revised Mobile Food Vending Ordinance for City Council consideration. The revised ordinance attached herewith as **Alternative A** reflects the discussion and direction provided by the City Council at the September 24, 2012 public hearing.

The original ordinance presented on September 24, 2012 is labeled and attached herewith as **Alternative B**.

A brief analysis of the revisions directed by the City Council is provided below (Note that the revisions contained below are in sequential order consistent with the respective sections of the ordinance):

1. **Revise Findings** – The City Council directed staff to revise and/or delete findings to reflect the operations of Mobile Food Vendors. The City Council also noted that a finding outlining the positive benefits of Mobile Food Vendors should be added.

Staff has deleted the Findings Section 72.31.010 C & D to reflect the operations of Mobile Food Vendors. A Finding outlining the positive benefits of Mobile Food Vendors has also been added as directed by the City Council (§72.31.010 (G)).

2. **Cross referencing of ordinances** – Staff has added language in Section 72.31.020 which provides reference to the Mobile Food Vending Ordinance, on private property.

The City Attorney recommends cross referencing both of the mobile food vending ordinances for ease of use.

3. **Payment of Business Improvement District (BID) Fees** – The City Council concluded that mobile food vendors should contribute to the Business Improvement District (BID) assessment. A BID fee in the amount of \$400.00 has been recommended by the City Council.

In order to impose the Business Improvement District (BID) assessment to Mobile Food Vendors, the BID will need to be amended to specifically apply to mobile food vendors. Streets and Highways Code sections 36540 through 36542 allow the City Council to amend the basis and method for levying the BID assessment after holding a public hearing on the proposed modification.

In accordance with Section 36540 through 36542 of the Streets and Highways Code, a public hearing, with 45 day notice for the hearing and three publications in the paper (once per week for three weeks) is required. Accordingly, should the City Council elect to impose a fee on Mobile Vendors, staff recommends that the City Council direct staff to initiate Proceedings to Amend the Levy of Assessments for the Downtown Business Improvement District (BID) to include Mobile Food Vending pursuant to the City's fee schedule.

Note that the City's Business License and Downtown Business Improvement District assessment schedules attached herewith as **Exhibit C** are based upon annual gross revenues. Accordingly, assessments imposed on future mobile food vendors would be likewise based upon annual gross revenues.

Upon direction by the City Council with a proper notice and hearing, staff will bring back the annual Levy of Assessments for the fiscal year 2013-14 for City Council consideration.

4. **Condition mobile food vendors to report use tax** – The City Council directed staff to revise the Mobile Food Vending Ordinance to add conditions that require mobile food vendors to provide use tax verification to the city.

In consultation with the Finance Department, staff has revised Section 72.31.050 to notice mobile food vendors of the BID and tax reporting requirements. The revised Section 72.31.050 (B) & (C) is proposed to read as follows:

Section 72.31.050 Business License Required.

- A. No person shall engage in mobile food vending or operate a vending vehicle within the corporate limits of the City of Auburn without first having procured a business license from the City of Auburn as stated in Chapter 33 of this Code.
- B. *Downtown Business Improvement District (BID) Assessment. A mobile food merchant shall be subject to the City's Downtown Business Improvement District (BID) Assessment.*
- C. *State Board of Equalization (SBE) Documentation. A mobile food vendor shall provide a copy of their resale certificate number demonstrating registration and Use Tax payment (county pool) information received from SBE for their Mobile Food Vendor businesses.*

The above requirements will be verified by the Finance Department upon renewal of an applicant's business license.

5. **Condition to install signs: "Do not use adjacent business restrooms unless patronizing business"** – The City Council directed staff to add conditions that require mobile food vendors to display signs stating: "Do not use adjacent business restrooms unless patronizing business."

With respect to signage, staff has added subsection J of Section 72.31.070 of the Mobile Food Vending Ordinance to read as follows:

Section 72.31.070 Sales from Vending Vehicles.

J. Mobile food vendors shall display a sign which states: *"Please do not use bathroom of adjacent business unless patronizing business."*

Along with the other performance standards outlined in Section 72.31.060, the above condition will be imposed via approval by agencies of jurisdiction and issuance of the Business License by the Finance Department.

6. **Prohibition in Old Town but not Downtown** – The City Council recommended that mobile food vendors should be prohibited in the Old Town but may be permitted in the Downtown Historic Design Review District.

Section 72.31.080 of the Mobile Food Vending Ordinance has been revised to explicitly prohibit mobile food vendors in the Old Town as shown below:

Section 72.31.080 Locations Where Vending is Prohibited.

Mobile food vending may not take place in the Old Town Historic Design Review District as described in section 159.493 of this Code.

Mobile Food Vendor Survey:

As directed by the City Council, the attached survey (**Attachment 5**) was conducted by the Community Development Department staff to ascertain how other jurisdictions are addressing mobile food vendor uses.

Of the 12 jurisdictions surveyed 6 did not have any specific regulations in their zoning code that addressed (motorized) mobile food vending operations. Conversely, the Cities of Davis, Napa, Fortuna, and Sacramento (draft) have specific provisions for the regulation of Mobile Food Vendors and have approved Mobile Food Vending facilities.

Of the 6 jurisdictions that do not have mobile food vending provisions; the Cities of Eureka, Roseville, and Lincoln have either contemplated drafting a mobile food vending ordinance or are in the early stages of putting an ordinance together. Note that the Cities of Eureka, Lincoln, Rocklin, and Roseville do not have any specific provisions for (motorized) mobile food vendors, but have authorized mobile food vending via a special event permit and/or temporary use permit process.

Except for special events, the Cities of Placerville and Nevada City do not have any specific provisions to allow for mobile food vending and have therefore taken the position that mobile food vending, in both the public right of way and on private property, are prohibited.

Alternatives Available to Council; Implications of Alternatives

Upon receiving public testimony, the City Council may choose the following alternatives:

- A. Introduce and hold first reading of the Mobile Food Vending Ordinance as presented in Alternative A; and, direct Staff to Initiate Proceedings to Amend the Levy of Assessments for the Downtown Business Improvement District, as presented; or,
- B. Introduce and hold first reading of the Mobile Food Vending Ordinance, as amended by the City Council; and, direct Staff to Initiate Proceedings to Amend the Levy of Assessments for the Downtown Business Improvement District, as amended by the City Council; or,
- C. Provide further direction to staff.

Environmental Determination:

The Auburn Community Development Department reviewed this project for compliance with the California Environmental Quality Act (CEQA) and found it to be Categorically Exempt from the provisions of CEQA per Section 15311 (Accessory Structures) and Section 15304(e) (Minor Alterations to Land) of the CEQA Guidelines.

Fiscal Impacts

There are anticipated costs associated with review of business licenses for mobile food vendors in the public right of way. However, the collection of business license fees is anticipated to defray the costs associated with staff's review.

The staff costs incurred for the preparation of the draft ordinance, in consultation with the City Attorney, has been budgeted.

Additional Information

Please see the following attachments for more details:

ATTACHMENTS –

1. City Council Draft Minutes dated September 24, 2012
2. Business Organizations Correspondence dated August 24, 2012 w/o Attachments
3. Business Organizations Correspondence dated September 10, 2012 w/o Attachments
4. Business Organizations Correspondence dated September 28, 2012 with Attached Old Town & Downtown Restaurateur Mailing List
5. Mobile Food Vendor Survey
6. City Attorney memorandum for City Authority to Regulated Mobile Food Vendors
7. E-mail Correspondence dated October 17, 2012 from Mr. Scott Holbrook

EXHIBITS –

Exhibit A – Alternative A – Ordinance No. 12-____ An Ordinance Amending the Auburn Municipal Code with Attached Regulation of Mobile Food Vendors in the Public Right of Way, as Amended by the City Council.

Exhibit B – Alternative B – Ordinance No. 12-____ An Ordinance Amending the Auburn Municipal Code with Attached Regulation of Mobile Food Vendors in the Public Right of Way as presented on September 24, 2012.

Exhibit C – Direct Staff to Initiate Proceedings to Amend the Levy of Assessments for the Downtown Business Improvement District (BID) to include Mobile Food Vending pursuant to the City's fee schedule.

**EXHIBITS ON FILE WITH THE CITY CLERK & PROVIDED
TO CITY COUNCIL PREVIOUSLY UNDER SEPARATE COVER**

EXHIBITS –

- A. City Council Staff Report dated September 24, 2012 with the following attachments:
1. Section 159.033 (B)(11) Outdoor Vending and/or Temporary Sales
 2. Section 72.07 of the Auburn Municipal Code Entitled Lunch Wagons, Eating Carts, Pushcarts and Transportation of Property for Hire

ATTACHMENTS



AGENDA APPROVAL

The agenda was approved by consensus of the Council.

CONSENT CALENDAR

1. Minutes

By **MOTION**, approve City Council Minutes of 8/27/2012 and 9/10/2012.

2. Appointment to the Board of Directors for the California Transit Indemnity Pool (CalTIP)

By **RESOLUTION 12-102**, authorize the appointment of the position of Director of Public Works as the Board Director and the position of Administrative Analyst/Transit Manager as the Alternate Director to the California Transit Indemnity Pool.

***** End of Consent Calendar *****

By **MOTION**, approve the consent calendar.

MOTION: Holmes/ Powers/ Approved 4:0 (Nesbitt absent)

3. Public Comment

Renee Dubois, resident of Roseville, spoke of ways to make an impact on the local and national economy. She spoke of the importance of using American-made materials and goods; and gave the example of the home she is building in Newcastle.

Megan Siren, Transit Manager, spoke of the free medication take back event this Saturday. She also announced that on October 6th and 7th there is a free household hazardous waste event at the fairgrounds hosted by Western Placer Waste Management Authority.

PUBLIC HEARING

4. Mobile Food Vending on Private Property

Community Development Director Will Wong presented this item. He explained the Planning Commission's actions and recommendations.

Council Member Holmes asked about non-restricted areas for mobile food vendors to operate. He also asked about push-cart businesses, paved lots, vacant lots, the pooling system for sales tax, and use permits.

Will Wong explained what areas of Auburn would be open for mobile food vendors and the applicable restrictions. Andy Heath explained how the pooling system for sales tax is determined in Placer County.

Council Member Powers asked for clarification in regards to the prohibition of any mobile food vending in the Historic Design Review Districts. She asked about time limits for the mobile food vendors.

Will Wong said the current city policy allows mobile food vending for a maximum of 30 minutes at any one place. He said the new ordinance would allow a use permit for up to two hours at any one location on private property.

Council Member Kirby asked how a permit would be issued for a vendor that utilizes multiple locations. He also asked about sales tax, paved lot requirements, comparisons with other historic districts, and available properties in Old Town.

Mayor Hanley asked about enforcement on private property, the correction on the revised ordinance regarding vacant lots, the verbiage regarding a secondary business requirement, and multiple food vendors on one lot.

Council Member Holmes asked about mobile food vending at construction sites.

Mayor Hanley addressed the sales tax pool and possible benefits.

Andy Heath explained further how the Placer County tax pool works and how it benefits the City.

Council recessed for 5 minutes

Public comment in favor of mobile food vending in Auburn:
Alex Constantino, Local Business Owner; Mark Foley of Newcastle; Bill Vaughan, Local Business Owner; Charles Robb of Auburn, Mary Ebbert-Robb of Auburn; Jackie Weston, Local Business Owner; Linda Soucek; and Robert Snyder of Auburn.

Public comment in opposition of mobile food vending in Auburn
Eric Nordby, Local Business Owner and Dion Isaacson, Local Business Owner.

Public comment regarding mobile food vending: Joe Labrie of Auburn and Wade Johnson.

Council Member Kirby said he does not have the information he needs to make a decision at this meeting. He said he would like to see what other communities are doing. He also said it would be nice to hear the Business Association's position on this issue. He said there are many issues with the ordinance that way it is currently being proposed. He said he would like the ordinance to go back to the Planning Commission and get more public involvement.

Council Member Powers said she would also like to see what other communities are doing about mobile food trucks. She said she would like to look into a way to incorporate business improvement district fees into permit fees if a truck is located in one of those districts.

Council Member Holmes said he is concerned with the 2-1 Planning Commission vote. He said he would have preferred all eligible voting members be present. He said he wants more information on the ability to have mobile food vending at work/construction sites. He said he would like to see some of the restrictions on the proposed ordinance reduced.

Mayor Hanley said he feels enough information has been presented to make a decision. He said he feels the role of the City of Auburn is to protect the health and safety of residents and business owners, to encourage business owners to compete for customers on a level playing field and to allow consumers to make choices on what goods and services they want to purchase. He said the goal should be to try to establish free and fair competition without free rides on other people's investments. He said he supports a ban on food trucks operating in the Old Town Historic District due to the narrow streets, limited parking, and crowded sidewalks. He said the same ban could not be justified in the Downtown Historic District. He proposed revised wording for the ordinance to ban Old Town locations only. He proposed a \$400 Business Improvement District fee for any mobile food truck operating within the Downtown District. He addressed the benefit of sales tax through the Placer County tax pool. He proposed revised wording to confirm the sales tax would be paid through the pooling arrangement. He proposed verbiage to clarify only one mobile food truck per lot. He proposed signage on mobile food trucks addressing the use of restrooms at neighboring businesses. He addressed "exaggerations" in the "findings" section of the ordinance (159.176.010) and asked that they be revised.

Council Member Powers requested a revision to the ordinance to allow for un-paved lots.

Council Member Kirby said due to the revisions requested and lack of information, he feels this ordinance needs more time and more review.

Mayor Hanley suggested staff draft a revised ordinance ("alternative A") and bring it back to a future meeting with more business owner and public involvement.

Council Member Holmes agreed and said he would especially like to see input from the Old Town and Downtown Business Associations.

By **MOTION**, continue this public hearing to the October 22, 2012 City Council Meeting, direct staff to prepare "Alternative A" ordinance draft, gather additional information about other jurisdictions on how they are handling mobile food vending businesses, complete outreach to the business organizations, and have the City Attorney provide background on any legal issues related to this proposed ordinance.

MOTION: Hanley/ Holmes/ Approved 4:0 (Nesbitt absent)

5. **Mobile Food Vendors, in the Public Right of Way, in the City of Auburn**

Community Development Director Will Wong asked if this item will also be continued to the October 22, 2012 meeting. He addressed questions the Council had before this is brought back before them including: traffic engineer opinion, public property usage, and the farmers market temporary sales permit.

By **MOTION**, continue this public hearing to the October 22, 2012 City Council Meeting.

MOTION: Powers/ Holmes/ Approved 4:0 (Nesbitt absent)

***Council recessed for 5 minutes,
Council Member Kirby left the meeting ***

COUNCIL BUSINESS

6. **Overview of the City's Current and Past Economic Development Efforts**

City Manager Robert Richardson presented this item (presentation available in the permanent record). He reviewed sales tax revenues since July 2003, the City's initial economic goal, steps taken, completed projects, building phase, recession phase, recovery phase, a year over year comparison, and similar city comparisons. He reviewed upcoming economic development projects including the updates to the Airport, Auburn Industry 2012 event, World Class Adventure Destination,



CITY OF AUBURN

Community Development Department

1225 LINCOLN WAY • AUBURN, CA 95603 • PHONE (530) 823-4211 • FAX (530) 885-5508

August 24, 2012

Bruce Cosgrove, Auburn Chamber of Commerce
Jim Brill, Downtown Business Association
Dave Johnson, Old Town Business Association
Jack Remington, Highway 49 Business Association
Distribution via Email

Subject: Mobile Food Vending Ordinance(s)

Bruce, Jim, Dave and Jack,

As you may know, the Community Development Department is preparing two separate Mobile Food Vending Ordinances for City Council consideration; one for private property and one for vehicles in the public right-of-way.

The purpose of this letter is twofold: First, to inform you of the status of each ordinance and secondly to summarize the more salient requirements of each. A brief description of each ordinance is summarized below (attached herewith are both of the draft ordinances):

1. Mobile Food Vending (Private Property):

The draft Mobile Food Vending ordinance (on private property) is proposed to be regulated via the City's zoning Code (Chapter 159.176 et. seq.) and therefore requires a recommendation by the Planning Commission prior to being forwarded to the City Council. The Planning Commission public hearing was continued at the August 21, 2012 meeting to September 4, 2012. Upon receiving a recommendation from the Planning Commission, the City Council is anticipated to hold a public hearing on September 24, 2012.

In summary, the draft Mobile Food Vending (on private property) ordinance requires the following:

- Mobile Food Vendors may not operate in the Old Town and Downtown Historic Design Review Districts.
- Upon receiving approval of a Use Permit by the Planning Commission and business license, subject to the operational standards outlined in Section 159.176.070 of the ordinance, Mobile Food Vendors (on private property) may locate in the following zone districts:

- Neighborhood Commercial (C-1);
 - Central Business (C-2);
 - Regional Commercial (C-3);
 - Office Building (OB);
 - Industrial Park (M-1);
 - Industrial (M-2);
 - Light Manufacturing (M-L);
 - Airport Industrial (AI-DC);
- Mobile food vendors may operate daily for up to 12 hours in each 24 hour period.
 - The Mobile food vending ordinance does not apply to mobile food merchants operating under a parade, march, assemblage or outdoor festival permit issued pursuant to Chapter 91 and Chapter 92 respectively of the Auburn Municipal Code.

2. Mobile Food Vending (in the City's right-of-way)

The draft Mobile food vending ordinance (in the City right-of-way) is proposed to be regulated via the City's Municipal Code (Chapter 72.31 et. seq.) and therefore will be considered directly by the City Council. The City Council is anticipated to hold a public hearing on September 24, 2012 to consider the ordinance.

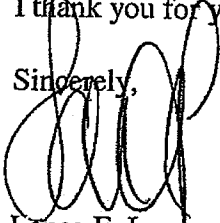
In summary, the draft Mobile Food Vending (in the City right-of-way) ordinance requires the following:

- Mobile Food Vendors may not operate in the Old Town and Downtown Historic Districts.
- A business license shall be obtained prior to operation and the Mobile Food Vendor shall comply with the standards contained in Section 72.31.070 of the ordinance.
- A vending vehicle may park in the public right-of-way in one location for a maximum of 1 hour and must move a minimum distance of 500 feet before it can park again.
- Mobile Food Vendors may operate 24 hours, 7 days a week.
- The Mobile food vending ordinance does not apply to mobile food merchants operating under a parade, march, assemblage or outdoor festival permit issued pursuant to Chapter 91 and Chapter 92 respectively of the Auburn Municipal Code.

If you have any questions regarding either of the Mobile Food Vending ordinances you can either email me at llowe@auburn.ca.gov or call me directly at (530) 823-4211, extension 103.

I thank you for your time and consideration in this matter.

Sincerely,



Lance E. Lowe, AICP
Associate Planner

cc: City Council
Planning Commission
City Manager
Community Development Director

Attachments:

1. Mobile Food Vending (on private property)
2. Mobile Food Vending (in the public right-of-way)



CITY OF AUBURN

Community Development Department

1225 LINCOLN WAY • AUBURN, CA 95603 • PHONE (530) 823-4211 • FAX (530) 885-5508

September 10, 2012

Bruce Cosgrove, Auburn Chamber of Commerce
Jim Brill, Downtown Business Association
Harvey Roper, Downtown Business Association
Dave Johnson, Old Town Business Association
Jack Remington, Highway 49 Business Association
Distribution via Email

Subject: Mobile Food Vending Ordinance(s) Update #2

Bruce, Jim, Harvey, Dave and Jack,

I write this correspondence in follow up to correspondence dated August 24, 2012, regarding the two Mobile Food Vending Ordinances that the Community Development Department is preparing; one for private property and one for vehicles in the public right-of-way.

The purpose of this letter is to inform you of the Planning Commission's recommendations that occurred on September 4, 2012 on the Mobile Food Vending Ordinance, on private property. The amended Mobile Food Vending Ordinance, on private property and Mobile Food Vending Ordinance for vehicles in the right-of-way, are scheduled to be considered by the City Council on September 24, 2012.

1. Mobile Food Vending (Private Property):

As noted in the August 24, 2012 correspondence, the draft Mobile Food Vending ordinance (on private property) is proposed to be regulated via the City's zoning Code (Chapter 159.176 et. seq.) and therefore requires a recommendation by the Planning Commission prior to being forwarded to the City Council. The Planning Commission public hearing was continued at the August 21, 2012 meeting to September 4, 2012. At the September 4, 2012, Planning Commission public hearing, the Planning Commission recommended approval of the Mobile Food Vending Ordinance with the following recommendations:

- Mobile Vendors shall be prohibited in the Old Town and Downtown Design Review Districts;
- Hours of operation at one location shall be reduced from 12 hours to 2 hours;
- Mobile Vending locations shall be paved;
- Mobile Vending may occur on vacant lots;

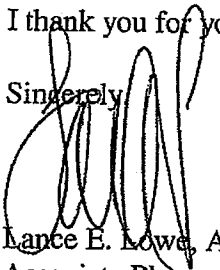
- Directed staff to provide analysis of Mobile Food Vending Sales Tax requirements.

Again, the proposed Mobile Food Vending Ordinance, as modified by the Planning Commission, is scheduled to be heard before the City Council on September 24, 2012. As noted above, the Mobile Food Vending Ordinance for vehicles in the public right-of-way will likewise be heard by the City Council on September 24, 2012.

If you have any questions regarding either of the Mobile Food Vending ordinances you can either email me at llowe@auburn.ca.gov, or call me directly at (530) 823-4211, extension 103.

I thank you for your time and consideration in this matter.

Sincerely,



Lance E. Lowe, AICP
Associate Planner

cc: City Council
Planning Commission
City Manager
Community Development Director



CITY OF AUBURN

Community Development Department

1225 LINCOLN WAY • AUBURN, CA 95603 • PHONE (530) 823-4211 • FAX (530) 885-5508

October 1, 2012

Bruce Cosgrove, Auburn Chamber of Commerce
Jim Brill, Downtown Business Association
Harvey Roper, Downtown Business Association
Dave Johnson, Old Town Business Association
Jack Remington, Highway 49 Business Association
Distribution via Email

Subject: Mobile Food Vending Ordinance(s) Update #3

Bruce, Jim, Harvey, Dave and Jack,

I write this correspondence in follow up to my previous two correspondences dated August 24 and September 10, 2012, regarding the two Mobile Food Vending Ordinances that the Community Development Department is preparing; one for private property and one for vehicles in the public right-of-way.

As disclosed previously, the City Council held a public hearing on September 24, 2012 to consider the two ordinances and continued the public hearing to October 22, 2012. As mentioned in the City Council meeting, the City Council has not received any input from the Highway 49, Old Town and Downtown business organizations and is certainly interested in seeking comment on the two ordinances.

In addition, the City Council directed staff to revise and/or provide further information on the Mobile Food Vending Ordinances for City Council's consideration. On October 22, 2012, the City Council will consider, in addition to the original draft, an Alternative A of the Mobile Food Vending Ordinance that incorporates the City Council's recommended revisions. The City Council revisions and/or information include, but are not limited to the following:

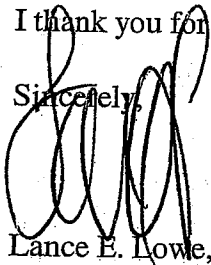
- **Prohibition in Old Town but not Downtown** – Mobile Food Vendors should be prohibited in the Old Town but may be permitted in the Downtown Historic Design Review District.
- **Payment of Business Improvement District (BID) Fees** – Mobile Food Vendors should contribute to the Business Improvement District (BID) fees. A BID fee in the amount of \$400.00 is being considered by the City Council.

- **Condition Mobile Food Vendors to Report Use Tax** – The City Council directed staff to revise the Mobile Food Vending Ordinance to add conditions that require Mobile Food Vendors to provide tax verification to the City.
- **Condition to install signs “Do not use adjacent business restrooms unless patronizing business”** – The City Council directed staff to add conditions that require Mobile Food Vendors to display signs: “Do not use adjacent business restrooms unless patronizing business.”
- **Mobile Food Vendors may be permitted on unpaved sites** – The City Council may permit Mobile Food Vendors to locate on unpaved sites.
- **Only one Mobile Food Vendor may be permitted per parcel or site** – The City Council directed staff to impose provisions that allowed only one Mobile Food Vendor per parcel or site.
- **Revise Findings** – The City Council directed staff to revise Findings to reflect the operations of Mobile Food Vendors. A Finding outlining the positive benefits of Mobile Food Vendors should also be added.

If you have any questions regarding either of the Mobile Food Vending ordinances you can either email me at llowe@auburn.ca.gov or call me directly at (530) 823-4211, extension 103.

I thank you for your time and consideration in this matter.

Sincerely,



Lance E. Lowe, AICP
Associate Planner

cc: City Council
Planning Commission
Old Town & Downtown BID Restaurateurs
City Manager
Community Development Director

Old Town

Auburn Alehouse
289 Washington St.
Auburn, CA 95603
Attn: Brian Ford

Brookside Coffee House & Café
111 Sacramento St.
Space R
Auburn, CA 95603
Attn: Mike Havis

Courthouse Coffee
1425 Lincoln Way
Auburn, CA 95603
Attn: Jacki Zuvella

Tio Pepe
216 Washington St.
Auburn, CA 95603
Attn: Jose Cordero

Old Town

Awful Annie's Inc.
160 Washington St.
Auburn, CA 95603
Attn: Donald Baker

Café Delicious
1591 Lincoln Way
Auburn, CA 95603
Attn: Nabor Ramirez

Elleweiss #2
111 Sacramento St.
Auburn, CA 95603
Attn: Nibih Haddad

Tsuada's Eatery
103 Sacramento St.
Auburn, CA 95603
Attn: Alexandra Hastings

Old Town

Bootleggers Old Town Tavern
210 Washington St.
Auburn, CA 95603
Attn: Tyrone Rowe

Carpe Vino
1568 Lincoln Way
Auburn, CA 95603
Attn: Gary Moffat

Old Town Pizza
150 Sacramento St.
Auburn, CA 95603

Downtown

The Big Salad
799 Lincoln Way
Auburn, CA 95603
David Nelson

Depot Bay Coffee Co.
893 High Street
Auburn, CA 95603
Attn: Dion Isaacson

High Street Café
1045 High Street
Auburn, CA 95603
Attn: Zaki Haddad

Downtown

Bruney's Hot Dogs
886 Lincoln Way
Auburn, CA 95603
Attn: Bill Veerkamp

Edelweiss Restaurant #1
627 High Street
Auburn, CA 95603
Attn: William Haddad

Local Heroes of Auburn
1120 High Street
Auburn, CA 95603
Attn: Lisa Swisley

Downtown

Club Car Bar & Restaurant
836 Lincoln Way
Auburn, CA 95603
Attn: Sarah Sanders

Hanami Sushi
944 Lincoln Way
Auburn, CA 95603

Monkey Cat
805 Lincoln Way
Auburn, CA 95603
Attn: James Brill

Ninja Sushi
770 Lincoln Way
Auburn, CA 95603
Attn: Jay Pak

Pachamama's
884 Lincoln Way
Auburn, CA 95603
Attn: Dawntrix Kerry

Panchos Mexican Food
844 Lincoln Way
Auburn, CA 95603
Attn: Gloria Rodriquez

Pelecan's Roost
904 Lincoln Way
Auburn, CA 95603
Attn: Kim Young

Power Club
195 Harrison Ave
Auburn, CA 95603
Alfred Lee

Royal Thai Restaurant
891 Lincoln Way
Auburn, CA 95603
Attn: Boapud Lincoln

Sum's Mongolian Bbq
958 Lincoln Way
Auburn, CA 95603
Attn: Wallace Soohoo

Taco Tree
180 Oakwood
Auburn, CA 95603
Attn: James Anderson

Tre Pazzi
928 Lincoln Way
Auburn, CA 95603
Attn: Jim Brill

CA Cities Mobile Food Vendor Provisions

City	Permit	Location Restrictions	Time Limit	Misc. Conditions	Sales Tax
Fortuna	Yes; application process; valid for one year; need Business License	<ul style="list-style-type: none"> Paved site Must have permission from property owner for use of site and restrooms for workers 	<ul style="list-style-type: none"> Hours specified in use permit May arrive up to one hour before opening and one hour after closing Stationary units permitted to stay overnight; treated as restaurants 	<ul style="list-style-type: none"> Portable toilets are not allowed Cannot use parking if adversely affects the principal use of the site Vehicles are self-sufficient (gas, electricity, water); if not, additional permits are required Must maintain the area in a clean, safe, and sanitary condition 	Yes; subject to same requirements and regulations as any other retailer
City of Grass Valley	Yes; temporary Use permit required of each vending vehicle; valid for one year; not transferable; reviewed by the chief of police	<ul style="list-style-type: none"> Only on a private developed site. 1,000 feet from city parks, schools recreational facilities etc. Prohibited in Downtown Historic District 	<ul style="list-style-type: none"> 9:00 am to 9:00 pm 7 a.m. to 11 p.m. 	<ul style="list-style-type: none"> Must comply with the City's noise standards No site furniture or free standing signs Must apply for appropriate permits for site improvements Vehicles are self-sufficient (no water, gas, or electrical lines) No exterior storage or display; no obstructions or safety hazards Must maintain the area in a clean, safe, and sanitary condition 	Not specified
Nevada City	Not permitted; all commercial uses to be conducted in enclosed building.	N/A	N/A	N/A	N/A
City of Napa	Yes, permitted in right of way. Use Permit on private property.	Permitted in Commercial Zones with approval of Use Permit.	Generally no time limits unless specified in the Use Permit.	Must meet City Zoning requirements and public health requirements and food handling rules	Not specified
Lincoln	Yes, business License for Mobile Food Vendors in the public right of way.	Permitted in right of way. Permitted with Administrative Permit for up to 12 days per year.	15 minute limit in the public right of way. Per conditions on private property.	Must meet City Zoning requirements and public health requirements and food handling rules	Not specified

Roseville	Yes; administrative Permit for right of way and private property.	<ul style="list-style-type: none"> Permitted in specified zones in conjunction with existing commercial or manufacturing operation. 	<ul style="list-style-type: none"> Per the parking restrictions in the right of way. Per Administrative Permit conditions on private property. 	<ul style="list-style-type: none"> Must meet City Zoning requirements and public health requirements and food handling rules 	Not specified
Rocklin	Permitted with Administrative Permit	<ul style="list-style-type: none"> Permitted in specified zones in conjunction with existing commercial or manufacturing operation. 	<ul style="list-style-type: none"> Hours of operation limitations. 	<ul style="list-style-type: none"> Must meet City Zoning requirements and public health requirements and food handling rules 	Not specified
Eureka	Yes, three permits issues in 1970's. Temp use permit required.	<ul style="list-style-type: none"> Permitted in specified zones in conjunction with existing commercial or manufacturing operation. 	<ul style="list-style-type: none"> No limitations. 	<ul style="list-style-type: none"> N/A 	Not specified
Placerville	Not permitted	<ul style="list-style-type: none"> N/A 	<ul style="list-style-type: none"> N/A 	<ul style="list-style-type: none"> N/A 	Not specified
City of Davis	Permitted with Zoning Permit on private property. Encroachment Permit required in public right of way.	<ul style="list-style-type: none"> Permitted by Right in Industrial, Light Industrial and Office Zones. Conditionally permitted in Auto Center, Commercial Service, Commercial Mixed Use and Industrial Admin and Research Zones. 	<ul style="list-style-type: none"> N/A unless imposed via Use Permit. 		Not specified
City of Folsom	Permitted with organized event.	<ul style="list-style-type: none"> Permitted with organized event. 	<ul style="list-style-type: none"> Per the limitations of the event. 	<ul style="list-style-type: none"> Must meet City Zoning requirements and public health requirements and food handling rules 	Not specified
City of Sac (Draft)	Yes; requires mobile catering business license	<ul style="list-style-type: none"> Location limitations based on zone and proximity to brick and mortar restaurants Prohibit vending on the public right of way in Old Town Sacramento 	<ul style="list-style-type: none"> Time limitations in right of way (0.5 to 2.5 hours) Private property 6 a.m. to 11 p.m. 	<ul style="list-style-type: none"> Operators responsible for clean-up and trash removal No tables and chairs No amplified sound 	Not specified
City of Truckee	Environmental Health Permit Req.	<ul style="list-style-type: none"> On private property 	<ul style="list-style-type: none"> 2 hrs. 	<ul style="list-style-type: none"> N/A 	N/A



CITY OF AUBURN
OFFICE OF THE CITY ATTORNEY
M E M O R A N D U M

TO: Mayor Hanley and Members of the City Council

FROM: Michael G. Colantuono, City Attorney
Michael R. Cobden, Assistant City Attorney

CC: Robert Richardson, City Manager
Will Wong, Community Development Director

DATE: October 11, 2012

SUBJECT: City Authority to Regulate Mobile Food Vendors

Introduction. As the Council directed at its September 24th meeting, we write to provide an overview of the City's authority to regulate mobile food vendors in various areas of Auburn. The City's power to regulate mobile food vendors is derived from three sources, depending on the location at which a mobile food vendor chooses to operate:

- **For City-owned property**, such as municipal parking lots, the City has power to control use of the property similar to that of any other landowner.
- The City can regulate uses of **private property** under general land use laws which apply to all businesses, whether mobile or stationary.
- Finally, the California Vehicle Code authorizes the City to regulate mobile vendors in **public streets and other rights-of-way**.

We address each of these regulatory schemes in turn below.

I. Regulation of Government Property

The City's authority to regulate the use of its own land is like that of any landowner, except to the extent that land is a public forum for First Amendment purposes, in which case the City's regulations of speech must be content-neutral regulations of the time, place and manner of speech. Of course, no city policy can discriminate the basis of a protested class, like race, gender, creed, etc. Food sales are

not generally considered speech. Therefore, the City Council can limit or regulate the access or use of City property at any time, or impose reasonable restrictions as it deems necessary.¹

The City can also regulate food vending on County or State property, but only where the property is being used by a private party for proprietary purposes — i.e., not to advance the governmental objectives of the public land owner.² For example, if the Placer County Fair Board were to lease a portion of the Gold County Fairgrounds to a private company to operate a roller derby, and wanted to set up corn dog trailers for spectators, the City's zoning regulations for private property would apply.³ However, if the Fair Board invited the same vendors to serve at the County Fair, the City's zoning regulations would not apply. The City has very little power to regulate the use of federal property, such as post offices.

II. Regulation of Private Property

In general, the City has very broad power to regulate use of private property via its zoning ordinance. The California Supreme Court has affirmed the power of city zoning ordinances to strictly regulate which kinds of businesses can operate in various zones. (*Hernandez v. City of Hanford* (2007) 41 Cal.4th 279, 299.) In the *Hanford* case, the City barred furniture stores from a downtown commercial district smaller than 50,000 square feet. The City stated its goal was to promote the downtown area, by protecting existing, large department stores. The Court concluded that this was an acceptable goal, and that the City could accomplish it by very selective zoning laws that burdened some types of businesses more than others.

As long as regulations do not engage in illegal discrimination and a rational basis can be stated for each distinction they make between types of businesses and locations, the courts will defer to the City's land use decisions.⁴ Therefore, the City can determine that some types of businesses may operate on private property only in specific areas. This is the basis for the City's zoning power in general, and it applies to "brick and mortar" and mobile food vendors alike.

Although the City has broad power to regulate business locations, there have been cases in which certain types of restrictions were struck down. In *People v. Ala Carte*

¹ Gov. Code § 37359.

² *Akins v. County of Sonoma* (1967) 67 Cal.2d 185, 194.

³ 68 Ops. Cal. Atty. Gen. 114 (1985).

⁴ *Lockard v. City of Los Angeles* (1949) 33 Cal.2d 453, 460.
1123133

Catering Co. (1979) 98 Cal.App.3d Supp. 1, in which the Appellate Department of the Los Angeles County Superior Court invalidated an ordinance prohibiting food trucks within 100' of a restaurant. The court concluded the ordinance was motivated by economic protectionism, rather than general planning concerns, and therefore lacked a sufficiently non-discriminatory rationale.

Although the L.A. court disapproved of the distance requirement at issue in *Ala Carte Catering*, that conclusion appears to be contrary to the Supreme Court's more recent decision in *Hernandez*. The majority of cases on general land use powers of the City indicate that a distance requirement is still potentially within the scope of the City's authority. However, any ordinance the City adopts should have a rationale basis that amounts to more than a desire to favor certain businesses, such as a desire to protect health and safety or provide a level playing field for competing businesses.

III. Regulation of Rights of Way

The City's power to regulate food trucks on public streets and sidewalks is provided and limited by the Vehicle Code. Vehicle Code § 22455 allows the City to regulate mobile vendors on public streets to protect health and safety.⁵ The Vehicle Code imposes its own rules for accessibility of restrooms and hand-washing facilities.⁶ The City may adopt stricter rules, so long as the rules promote public health and safety.⁷

In public streets, the City can regulate where, when, and how a mobile food vendor can set up shop so long as the regulations are justified by health and safety considerations. For example, the City could require that the vendor park in a specific way so as to avoid attracting pedestrians into the path of passing traffic. The City could ban food trucks where special conditions in a particular area of the City indicate a problem might be caused by parking a large vehicle for extended periods while pedestrians line up, gather, or sit. Potential problems might include traffic sight distances or pedestrian safety. So long as there is a health or public safety reason for a particular rule, and that rule is not more lenient than a State statute on the same subject, it is permitted by the Vehicle Code.

⁵ See *Barajas v. City of Anaheim* (1993) 15 Cal.App.4th 1808, 1814.

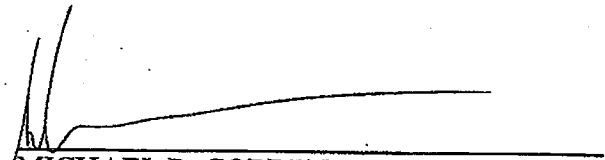
⁶ Health & Saf. Code § 114315 requires that such facilities be located within 200' of a mobile food vendor.

⁷ Veh. Code § 22455(b).

Conclusion. The City has the authority to regulate mobile food vendors on public property, private property, and in the streets. In general, the City has fairly broad power to regulate mobile food vendors, although that power is not absolute. In each location, the authority derives from a different source, and so the scope of the City's power will depend on where the regulation is directed.

If you have any questions or concerns about the advice stated here, please do not hesitate to contact us.

DATED: October 11, 2012



MICHAEL R. COBDEN
Assistant City Attorney

From: Scott <auburnscott@netscape.net>
Sent: Tuesday, October 16, 2012 1:37 PM
To: Amy Lind; Robert Richardson
Subject: Document for Meeting

If time is appropriate I would like this email submitted as part of the public record for the agenda item inre Truck Vendors for next Monday's meeting

To The Auburn City Council,

I have many strong opinions regarding government interference, but Allowing trucks into Downtown / Old Town is just wrong. - Be it a food, beverage or ice cream / yogurt truck, a service truck (Hair Cutter, lawyer, Realtor ..) - A retail Truck (Dress Shop, crafts, antiques) or otherwise. Empty lots or corners of existing businesses parking lots are not there to allow owners to make a quick buck allowing trucks to come in during prime time and poach customers from their neighbors running existing brick and mortar businesses, who by nature can not compete on an equal playing field.

From Burney's Hot Dogs to The Monkey Cat, all are owned and run folks who have invested greatly into Auburn, and all will be negatively impacted by these trucks - If you allow a Hot Dog / Burger Truck to be parked next to Beacons - I bet both Burneys and Local Hero's would soon go out of business. These are businesses here all year round - good weather and bad, most all hire local people to work in their establishments (will a roach coach out of West Sac do that?), and all by definition are committed to the City of Auburn for the long haul, should they succeed as hoped, given a fair chance. The same can not be said about out of town trucks who come in during prime-time, who knows how long they would be around - and most likely most would leave for greener pastures, but by that time the damage may be done.

Competition is good - when the rules are equivalent. Brick and Mortars are subject to ADA Requirements (would you require trucks have ADA requirements?), Sign Ordinances (will you hold trucks accountable to the same sign requirements?) - some trucks are driving billboards - Restroom Facilities, Disposal facilities, Seating..... When a business is approved is Parking taken into consideration? Who will be choosing what trucks will be allowed and what won't.....

Trucks should not be allowed within at least 1500 feet of a comparable business. Perhaps they could be at a place like Overlook Park, Rec Park, Fairgrounds Parking lots - somewhat like a Farmers Market - or how they have traditionally operated.

Then to not allow them in Old Town and allow them in Downtown? - how selective is this? If it is wrong it is wrong - Be it in the parking lot of Bootleggers or some tire shop.

Protect & support your local Retail / Restaurant businesses who have committed to Auburn. Do not allow trucks to come in and change the character of Auburn, - Yeah some reporters might like to partake in the newest fad - but when the fad is over what will be left? Where will the kids get a \$5.00 Hot Dog meal when Burney's local hero's is gone & there is no truck around? Would you open a business if you knew a truck could pull up and compete during prime time?

Honor the code that has been around when it comes to food trucks or other vending trucks, limit them to special events, non-retail/restaurant zones - or areas such as I mentioned above that will make them a destination - If folks really want to partake in the newest food truck fad - put all the trucks in one location and let them compete with each other! I am sure ARD would work with the City to come up with a good location, that has picnic tables, garbage disposal locations and restrooms - not to mention ADA accessibility.

Thank you for listening, and your hopeful support of those who have signed leases and committed to making Auburn a vital place to shop, eat and otherwise conduct their businesses. Keep the control with the City (who will be enforcing rules? - as it is you have volunteer parking patrol...) and Keep downtown a vital destination location ..

As a small business owner - I know how hard it is - if a mobile mechanic pulled up across the street and undercut me it would have a big impact - and likely could be the straw that broke the camel's back.....Think about it, would you enter into a lease if you knew a truck could pull up across the street and start competing for your business? Protect Auburn's long

term economic core.... I could go on, but bottom line allowing trucks to come in and poach from brick and mortars is plain out wrong!

Keep Smilin'

Scott Holbrook, Chair of the Auburn Area Park and Recreation District Board of Directors (for ID Purposes), Small Business Owner, and customer of many Auburn brick and mortars.

www.scottseconolube.com

www.keepsmilinpromotions.com

www.partyinthepark.net

www.auburnrec.com

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EXHIBITS



EXHIBIT A

ORDINANCE NO. 12-____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN AMENDING
THE AUBURN MUNICIPAL CODE TO REGULATE MOBILE FOOD VENDING IN THE
PUBLIC RIGHT OF WAY

THE CITY COUNCIL OF THE CITY OF AUBURN DOES ORDAIN AS FOLLOWS

Section One: Findings. The City Council of the City of Auburn hereby
finds:

1. Mobile food vending has the potential to pose special dangers to
the public health, safety and welfare of residents of the City that are not posed
by restaurants or food vending from a permanent fixed location.

2. Vending vehicles parked in one location for more than one hour at
a time in the public right of way exacerbate existing traffic problems in
congested areas and obstruct sidewalks. There is an additional safety risk for
pedestrians who may cross public roadways attempting to access the vendors.

3. Mobile food vendors who fail to park their vending vehicles
correctly during a transaction may attract prospective buyers onto public
roadways, creating additional traffic and public safety hazards.

~~4. Mobile food vendors use public spaces to serve food, and patrons
typically consume that food in the same public space. Food from a mobile food
vendor is usually served along with paper or plastic wrappings, utensils,
napkins, and other associated implements that must be disposed of in the area
of the vendor. Improperly discarded food and rubbish can pose a threat to
public health by attracting vermin, and litter can create a hazard to drivers and
pedestrians alike.~~

1 5. ~~Mobile food vendors pose additional health and safety hazards~~
2 ~~compared to restaurants in a permanent fixed location because vending~~
3 ~~vehicles are not generally equipped with restrooms or hand washing facilities.~~
4 ~~Food handling, preparation, and consumption can spread pathogens and~~
5 ~~disease when hand washing facilities are not available to employees and~~
6 ~~patrons of food service businesses. When a restroom is not readily accessible~~
7 ~~to employees and patrons of a mobile food vendor, those individuals are more~~
8 ~~likely to use inappropriate outdoor spaces to urinate or otherwise relieve~~
9 ~~themselves, creating a serious health and safety hazard.~~

10
11 6. Narrow streets, limited on-street parking, crowded sidewalks, and
12 the related safety hazards identified above are all especially severe in the
13 Historic Design Review District. Allowing mobile food vendors in that area of
14 the City would pose an unacceptable threat to public health and safety, and
15 would additionally be detrimental to the density, aesthetic, and cultural
16 concerns of the City.

17 7. With proper regulation, mobile food vendors can provide additional
18 food choices for Auburn residents and visitors.

19 8. The City has an important and substantial public interest in
20 providing regulations to prevent safety, traffic, and health hazards, as well as
21 to preserve the peace, safety, and welfare of the community. Pursuant to
22 Section 15001 of the California Environmental Quality Act (CEQA) Guidelines,
23 this ordinance is Categorically Exempt from the provisions of CEQA per Section
24 15311 (Accessory Structures) and Section 15304(e) (Minor Alterations to
25 Land) of the CEQA Guidelines.

1 **Section Two: Code Amendments.**

2
3 1. Chapter 72.31 is hereby added to the Auburn Municipal Code in the
4 form attached hereto as **Attachment 1.**

5 2. The title of section 72.07 of the Auburn Municipal Code is hereby
6 amended to read:

7 "§ 72.07 PUSHCARTS AND TRANSPORTATION OF PROPERTY FOR HIRE;
8 PERMITS."
9

10 3. Section 72.07 paragraph (A) of the Auburn Municipal Code is hereby
11 amended to read:

12 "(A) No person shall stand or park on any street any vehicle, wagon or
13 pushcart from which goods, wares, or other merchandise are sold,
14 displayed, solicited, offered for sale, bartered or exchanged, except
15 that the vehicles, wagons or pushcarts may stand or park only at
16 the request of a bona fide purchaser for a period of time not to
17 exceed 10 minutes at any one location and then only after have
18 secured a permit from the Traffic Engineer.
19

20 (1) The provisions of this section shall not apply to mobile food
21 vendors or vending vehicles regulated by chapter 72.31 of this
22 Code.
23

24 (2) The provisions of this section shall not apply to persons
25 delivering the articles upon the order of, or by agreement with,
26 a customer from a store or other fixed place or business or
27 distribution.
28

1 (B) No person shall stand or park on any sidewalk any vehicle, wagon
2 or pushcart from which goods, wares, or other merchandise are
3 sold, displayed, solicited, offered for sale, bartered or exchanged,
4 for vending operations of any kind."

5
6 **Section Three: Effective Date.** This Ordinance shall take effect thirty
7 days following its adoption as provided by Government Code Section 36937.

8 **Section Four: Severability.** Should any provision, section, paragraph,
9 sentence or word of this Ordinance be rendered or declared invalid by any
10 court of competent jurisdiction or by reason of any preemptive legislation, the
11 remaining provisions, sections, paragraphs, sentences or words of this
12 Ordinance shall remain in full force and effect.

13
14 **Section Five: Certification.** The City Clerk shall certify to the passage
15 and adoption of this Ordinance and shall give notice of its adoption as required
16 by law.

17 DATED: October 22, 2012

18
19 _____
Kevin Hanley, Mayor

20 ATTEST:

21 _____
22 Joseph G. R. Labrie, City Clerk

23 I, Joseph G. R. Labrie, City Clerk of the City of Auburn, hereby certify
24 that the foregoing ordinance was duly passed at a regular meeting of the City
25 Council of the City of Auburn held on the 22th day of October 2012 by the
following vote on roll call:

26 Ayes:

27 Noes:

28 Absent:

Joseph G. R. Labrie, City Clerk

Chapter 72.31

**REGULATION OF MOBILE FOOD VENDORS IN THE
PUBLIC RIGHT OF WAY**

Section 72.31.010	Findings.
Section 72.31.020	Authority.
Section 72.31.030	Definitions.
Section 72.31.040	Reserved.
Section 72.31.050	Business License Required.
Section 72.31.060	Other Permits Required.
Section 72.31.070	Sales from Vending Vehicles.
Section 72.31.080	Locations Where Vending is Prohibited.
Section 72.31.090	Exception.
Section 72.31.100	Severability.

Section 72.31.010 Findings.

The City Council finds as follows:

- A. Mobile food vending has the potential to pose special dangers to the public health, safety and welfare of residents of the City that are not posed by restaurants or food vending from a permanent fixed location.
- B. Vending vehicles parked in one location for more than one hour at a time exacerbate existing traffic problems in congested areas and obstruct sidewalks. There is an additional safety risk for pedestrians who may cross public roadways attempting to access the vendors. Mobile food vendors who fail to park their vending vehicles correctly during a transaction may attract prospective buyers onto public roadways, creating additional traffic and public safety hazards.
- ~~C. Mobile food vendors use public spaces to serve food, and patrons typically consume that food in the same public space. Food from a mobile food vendor is usually served along with paper or plastic wrappings, utensils, napkins, and other associated implements that must be disposed of in the area of the vendor. Improperly discarded food and rubbish can pose a threat to public health by attracting vermin, and litter can create a hazard to drivers and pedestrians alike.~~
- ~~D. Mobile food vendors pose additional health and safety hazards compared to restaurants in a permanent fixed location because vending vehicles are not generally equipped with restrooms or hand washing facilities. Food handling, preparation, and consumption can spread pathogens and disease when hand-washing facilities are not available to employees and patrons of food service businesses. When a restroom is not readily accessible to employees and patrons of a mobile food vendor, those individuals are more likely to urinate in inappropriate outdoor spaces, creating a serious health and safety hazard.~~

- E. Narrow streets, limited on-street parking, crowded sidewalks, and the related safety hazards identified above are all especially severe in the *Old Town* Historic Design Review areas of Auburn. Allowing mobile food vendors in those areas of the City would pose an unacceptable threat to public health and safety, and would additionally be detrimental to the density, aesthetic, and cultural concerns of the City as described in Title XV of this Code.
- F. The City has an important and substantial public interest in providing regulations to prevent safety, traffic, and health hazards, as well as to preserve the peace, safety, and welfare of the community.
- G. *With proper regulation, mobile food vendors can provide additional food choices for Auburn residents and visitors.*

Section 72.31.020 Authority.

Section 72.31 is adopted pursuant to the authority granted to the City of Auburn by Section 22455 of the California Vehicle Code, which permits local authorities to regulate the type of vending and the time, place, and manner of vending from vehicles upon the street in order to promote public safety.

See Section 159.176 et. seq. for Mobile Food Vending on private property

Section 72.31.030 Definitions.

For the purposes of this chapter, the following phrases shall have the meaning respectively ascribed to them by this section:

- A. "Food" or "foodstuff" means and refer to any substance as defined by Section 113781 of the California Health and Safety Code, defined as a raw, cooked, or processed edible substance, ice, beverage, an ingredient used or intended for use or for sale in whole or in part for human consumption, and chewing gum.
- B. "Food preparation" means and refers to packaging, processing, assembling, portioning, or any operation that changes the form, flavor, or consistency of food, but does not include trimming of produce, as set forth by Section 113791 of the California Health and Safety Code.
- C. "Mobile food merchant" means and refers to any individual that operates or assists in the operation of a vending vehicle in the sale, display, solicitation or offer for sale, barter, exchange, gift or otherwise of foodstuffs from a vending vehicle.
- D. "Mobile food vending" means and refers to the sale, display, solicitation or offer for sale, barter, exchange, gift or otherwise, of foodstuffs from any vending vehicle.
- E. "Vending operations" means and refers to the sale, display, solicitation, offer for sale, barter, exchange, gift or otherwise of foodstuffs from a vending vehicle.
- F. "Vending vehicle" means and refers to any self-propelled, motorized device by which any person or property may be propelled or moved upon a highway, excepting a device moved exclusively by human power, or which may be drawn

or towed by a self-propelled, motorized vehicle, or used exclusively upon stationary rails or tracks, from which foodstuffs are sold, displayed, solicited or offered for sale, bartered, exchanged, given or otherwise.

Section 72.31.040 Reserved.

Section 72.31.050 Business License Required.

- A. No person shall engage in mobile food vending or operate a vending vehicle within the corporate limits of the City of Auburn without first having procured a business license from the City of Auburn as stated in Chapter 33 of this Code.
- B. Downtown Business Improvement District (BID) Taxes. A mobile food merchant shall be subject to the City's Downtown Business Improvement District (BID) Assessments.*
- C. State Board of Equalization (SBE) Documentation. A mobile food vendor shall provide a copy of their resale certificate number demonstrating registration and Use Tax payment (county pool) information received from SBE for their Mobile Food Vendor businesses.*

Section 72.31.060 Other Permits Required.

All vending vehicles shall have displayed in a conspicuous place any permits required by this ordinance, or any other applicable law.

Section 72.31.070 Sales from Vending Vehicles.

- A. Vending vehicles must be brought to a complete stop and be lawfully parked adjacent to the curb consistent with Vehicle Code 22500 and the provisions of Title VII of this Code prior to initiating vending operations.
- B. A vending vehicle may park in the public right of way in one location for a maximum of one hour in each 24 hour period. It must be moved a minimum distance of 500 feet before it can be parked for vending purposes again.
- C. A vending vehicle must park parallel to a public sidewalk. Any window or vehicle element that serves customers must be facing the sidewalk.
- D. A mobile food vendor shall not serve customers adjacent to a public sidewalk under circumstances where the vendor, his equipment, and his customers obstruct passage of the public sidewalk for all users, including those with mobility disabilities.
- E. No signs may be placed in the sidewalk, street, parking spaces, or public right of way.
- F. Mobile food merchants operating a vending vehicle must provide or have garbage receptacles readily available for immediate use by customers of the vending vehicle.
- G. Mobile food merchants operating a vending vehicle must pick up, remove and dispose of all garbage, refuse or litter consisting of foodstuffs, wrappers, and/or materials dispensed from the vending vehicle, and any residue deposited on the

street from the operation thereof, and shall otherwise maintain in a clean and debris-free condition the entire area where mobile food vending is occurring.

- H. A vending vehicle must be parked so as to comply with the requirements of Health & Safety Code section 114315.
- I. A vending vehicle shall be fully self contained including, but not limited to: mechanical holding units, gas or electric cooking equipment, water tank and hand sinks.
- J. *Mobile food vendors shall display a sign which states: "Please do not use bathroom of adjacent business unless patronizing business."*

Section 72.31.080 Locations Where Vending is Prohibited.

Mobile food vending may not take place in the *Old Town* Historic Design Review District as described in section 159.493 of this Code.

Section 72.31.090 Exception.

Any mobile food merchant identified in an application for parades, marches, and assemblages or outdoor festivals, submitted pursuant to Chapter 91 and Chapter 92 respectively of this Code or a Film Permit or any other City sponsored or approved event shall be exempt from the requirements of this Chapter pertaining to mobile food vending, provided that all of the following conditions are met:

- A. The vending vehicle is parked no longer than the duration of the special event to conduct its business; and
- B. The vending vehicle is parked so as to comply with the requirements of Health & Safety Code section 114315.
- C. A City of Auburn Business License has been obtained prior to operation.

Section 72.31.100 Severability.

If any section, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining sections, sentences, clauses, phrases, or portions of this Ordinance shall nonetheless remain in full force and effect. The City Council of the City of Auburn hereby declares that it would have adopted each section, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, sentences, clauses, phrases, or portions of this Section be declared invalid or unenforceable and, to that end, the provisions of this Section are severable.

EXHIBIT B

ORDINANCE NO. 12-____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN AMENDING
THE AUBURN MUNICIPAL CODE TO REGULATE MOBILE FOOD VENDING IN THE
PUBLIC RIGHT OF WAY

THE CITY COUNCIL OF THE CITY OF AUBURN DOES ORDAIN AS FOLLOWS

Section One: Findings. The City Council of the City of Auburn hereby
finds:

1. Mobile food vending has the potential to pose special dangers to
the public health, safety and welfare of residents of the City that are not posed
by restaurants or food vending from a permanent fixed location.

2. Vending vehicles parked in one location for more than one hour at
a time in the public right of way exacerbate existing traffic problems in
congested areas and obstruct sidewalks. There is an additional safety risk for
pedestrians who may cross public roadways attempting to access the vendors.

3. Mobile food vendors who fail to park their vending vehicles
correctly during a transaction may attract prospective buyers onto public
roadways, creating additional traffic and public safety hazards.

4. Mobile food vendors use public spaces to serve food, and patrons
typically consume that food in the same public space. Food from a mobile food
vendor is usually served along with paper or plastic wrappings, utensils,
napkins, and other associated implements that must be disposed of in the area
of the vendor. Improperly discarded food and rubbish can pose a threat to
public health by attracting vermin, and litter can create a hazard to drivers and
pedestrians alike.

1 5. Mobile food vendors pose additional health and safety hazards
2 compared to restaurants in a permanent fixed location because vending
3 vehicles are not generally equipped with restrooms or hand-washing facilities.
4 Food handling, preparation, and consumption can spread pathogens and
5 disease when hand-washing facilities are not available to employees and
6 patrons of food service businesses. When a restroom is not readily accessible
7 to employees and patrons of a mobile food vendor, those individuals are more
8 likely to use inappropriate outdoor spaces to urinate or otherwise relieve
9 themselves, creating a serious health and safety hazard.

10
11 6. Narrow streets, limited on-street parking, crowded sidewalks, and
12 the related safety hazards identified above are all especially severe in the
13 Historic Design Review District. Allowing mobile food vendors in that area of
14 the City would pose an unacceptable threat to public health and safety, and
15 would additionally be detrimental to the density, aesthetic, and cultural
16 concerns of the City.

17 7. The City has an important and substantial public interest in
18 providing regulations to prevent safety, traffic, and health hazards, as well as
19 to preserve the peace, safety, and welfare of the community. Pursuant to
20 Section 15001 of the California Environmental Quality Act (CEQA) Guidelines,
21 this ordinance is Categorically Exempt from the provisions of CEQA per Section
22 15311 (Accessory Structures) and Section 15304(e) (Minor Alterations to
23 Land) of the CEQA Guidelines.

24 **Section Two: Code Amendments.**

25
26 1. Chapter 72.31 is hereby added to the Auburn Municipal Code in the
27 form attached hereto as **Attachment 1**.
28

1 2. The title of section 72.07 of the Auburn Municipal Code is hereby
2 amended to read:

3 "§ 72.07 PUSHCARTS AND TRANSPORTATION OF PROPERTY FOR HIRE;
4 PERMITS."
5

6 3. Section 72.07 paragraph (A) of the Auburn Municipal Code is hereby
7 amended to read:

8 "(A) No person shall stand or park on any street any vehicle, wagon or
9 pushcart from which goods, wares, or other merchandise are sold,
10 displayed, solicited, offered for sale, bartered or exchanged, except
11 that the vehicles, wagons or pushcarts may stand or park only at
12 the request of a bona fide purchaser for a period of time not to
13 exceed 10 minutes at any one location and then only after have
14 secured a permit from the Traffic Engineer.
15

16 (1) The provisions of this section shall not apply to mobile food
17 vendors or vending vehicles regulated by chapter 72.31 of this
18 Code.
19

20 (2) The provisions of this section shall not apply to persons
21 delivering the articles upon the order of, or by agreement with,
22 a customer from a store or other fixed place or business or
23 distribution.
24

25 (B) No person shall stand or park on any sidewalk any vehicle, wagon
26 or pushcart from which goods, wares, or other merchandise are
27 sold, displayed, solicited, offered for sale, bartered or exchanged,
28 for vending operations of any kind."

1 **Section Three: Effective Date.** This Ordinance shall take effect thirty
2 days following its adoption as provided by Government Code Section 36937.

3
4 **Section Four: Severability.** Should any provision, section, paragraph,
5 sentence or word of this Ordinance be rendered or declared invalid by any
6 court of competent jurisdiction or by reason of any preemptive legislation, the
7 remaining provisions, sections, paragraphs, sentences or words of this
8 Ordinance shall remain in full force and effect.

9 **Section Five: Certification.** The City Clerk shall certify to the passage
10 and adoption of this Ordinance and shall give notice of its adoption as required
11 by law.

12
13 DATED: September 24, 2012

14
15 _____
16 Kevin Hanley, Mayor

17
18
19 ATTEST:

20
21 _____
22 Joseph G. R. Labrie, City Clerk

23 I, Joseph G. R. Labrie, City Clerk of the City of Auburn, hereby certify
24 that the foregoing ordinance was duly passed at a regular meeting of the City
25 Council of the City of Auburn held on the 24th day of September 2012 by the
26 following vote on roll call:

27 Ayes:

28 Noes:

 Absent:

Joseph G. R. Labrie, City Clerk

Chapter 72.31

REGULATION OF MOBILE FOOD VENDORS IN THE PUBLIC RIGHT OF WAY

Section 72.31.010	Findings.
Section 72.31.020	Authority.
Section 72.31.030	Definitions.
Section 72.31.040	Reserved.
Section 72.31.050	Business License Required.
Section 72.31.060	Other Permits Required.
Section 72.31.070	Sales from Vending Vehicles.
Section 72.31.080	Locations Where Vending is Prohibited.
Section 72.31.090	Exception.
Section 72.31.100	Severability.

Section 72.31.010 Findings.

The City Council finds as follows:

- A. Mobile food vending has the potential to pose special dangers to the public health, safety and welfare of residents of the City that are not posed by restaurants or food vending from a permanent fixed location.
- B. Vending vehicles parked in one location for more than one hour at a time exacerbate existing traffic problems in congested areas and obstruct sidewalks. There is an additional safety risk for pedestrians who may cross public roadways attempting to access the vendors. Mobile food vendors who fail to park their vending vehicles correctly during a transaction may attract prospective buyers onto public roadways, creating additional traffic and public safety hazards.
- C. Mobile food vendors use public spaces to serve food, and patrons typically consume that food in the same public space. Food from a mobile food vendor is usually served along with paper or plastic wrappings, utensils, napkins, and other associated implements that must be disposed of in the area of the vendor. Improperly discarded food and rubbish can pose a threat to public health by attracting vermin, and litter can create a hazard to drivers and pedestrians alike.
- D. Mobile food vendors pose additional health and safety hazards compared to restaurants in a permanent fixed location because vending vehicles are not generally equipped with restrooms or hand-washing facilities. Food handling, preparation, and consumption can spread pathogens and disease when hand-washing facilities are not available to employees and patrons of food service businesses. When a restroom is not readily accessible to employees and patrons of a mobile food vendor, those individuals are more likely to urinate in inappropriate outdoor spaces, creating a serious health and safety hazard.
- E. Narrow streets, limited on-street parking, crowded sidewalks, and the related

safety hazards identified above are all especially severe in the Historic Design Review areas of Auburn. Allowing mobile food vendors in those areas of the City would pose an unacceptable threat to public health and safety, and would additionally be detrimental to the density, aesthetic, and cultural concerns of the City as described in Title XV of this Code.

- F. The City has an important and substantial public interest in providing regulations to prevent safety, traffic, and health hazards, as well as to preserve the peace, safety, and welfare of the community.

Section 72.31.020 Authority.

Section 72.31 is adopted pursuant to the authority granted to the City of Auburn by Section 22455 of the California Vehicle Code, which permits local authorities to regulate the type of vending and the time, place, and manner of vending from vehicles upon the street in order to promote public safety.

Section 72.31.030 Definitions.

For the purposes of this chapter, the following phrases shall have the meaning respectively ascribed to them by this section:

- A. "Food" or "foodstuff" means and refer to any substance as defined by Section 113781 of the California Health and Safety Code, defined as a raw, cooked, or processed edible substance, ice, beverage, an ingredient used or intended for use or for sale in whole or in part for human consumption, and chewing gum.
- B. "Food preparation" means and refers to packaging, processing, assembling, portioning, or any operation that changes the form, flavor, or consistency of food, but does not include trimming of produce, as set forth by Section 113791 of the California Health and Safety Code.
- C. "Mobile food merchant" means and refers to any individual that operates or assists in the operation of a vending vehicle in the sale, display, solicitation or offer for sale, barter, exchange, gift or otherwise of foodstuffs from a vending vehicle.
- D. "Mobile food vending" means and refers to the sale, display, solicitation or offer for sale, barter, exchange, gift or otherwise, of foodstuffs from any vending vehicle.
- E. "Vending operations" means and refers to the sale, display, solicitation, offer for sale, barter, exchange, gift or otherwise of foodstuffs from a vending vehicle.
- F. "Vending vehicle" means and refers to any self-propelled, motorized device by which any person or property may be propelled or moved upon a highway, excepting a device moved exclusively by human power, or which may be drawn or towed by a self-propelled, motorized vehicle, or used exclusively upon stationary rails or tracks, from which foodstuffs are sold, displayed, solicited or offered for sale, bartered, exchanged, given or otherwise.

Section 72.31.040 Reserved.

Section 72.31.050 Business License Required.

No person shall engage in mobile food vending or operate a vending vehicle within the corporate limits of the City of Auburn without first having procured a business license from the City of Auburn as stated in Chapter 33 of this Code.

Section 72.31.060 Other Permits Required.

All vending vehicles shall have displayed in a conspicuous place any permits required by this ordinance, or any other applicable law.

Section 72.31.070 Sales from Vending Vehicles.

- A. Vending vehicles must be brought to a complete stop and be lawfully parked adjacent to the curb consistent with Vehicle Code 22500 and the provisions of Title VII of this Code prior to initiating vending operations.
- B. A vending vehicle may park in the public right of way in one location for a maximum of one hour in each 24 hour period. It must be moved a minimum distance of 500 feet before it can be parked for vending purposes again.
- C. A vending vehicle must park parallel to a public sidewalk. Any window or vehicle element that serves customers must be facing the sidewalk.
- D. A mobile food vendor shall not serve customers adjacent to a public sidewalk under circumstances where the vendor, his equipment, and his customers obstruct passage of the public sidewalk for all users, including those with mobility disabilities.
- E. No signs may be placed in the sidewalk, street, parking spaces, or public right of way.
- F. Mobile food merchants operating a vending vehicle must provide or have garbage receptacles readily available for immediate use by customers of the vending vehicle.
- G. Mobile food merchants operating a vending vehicle must pick up, remove and dispose of all garbage, refuse or litter consisting of foodstuffs, wrappers, and/or materials dispensed from the vending vehicle, and any residue deposited on the street from the operation thereof, and shall otherwise maintain in a clean and debris-free condition the entire area where mobile food vending is occurring.
- H. A vending vehicle must be parked so as to comply with the requirements of Health & Safety Code section 114315.
- I. A vending vehicle shall be fully self contained including, but not limited to: mechanical holding units, gas or electric cooking equipment, water tank and hand sinks.

Section 72.31.080 Locations Where Vending is Prohibited.

Mobile food vending may not take place in the Historic Design Review District as described in section 159.493 of this Code.

Section 72.31.090 Exception.

Any mobile food merchant identified in an application for parades, marches, and assemblages or outdoor festivals, submitted pursuant to Chapter 91 and Chapter 92 respectively of this Code or a Film Permit or any other City sponsored or approved event shall be exempt from the requirements of this Chapter pertaining to mobile food vending, provided that all of the following conditions are met:

- A. The vending vehicle is parked no longer than the duration of the special event to conduct its business; and
- B. The vending vehicle is parked so as to comply with the requirements of Health & Safety Code section 114315.
- C. A City of Auburn Business License has been obtained prior to operation.

Section 72.31.100 Severability.

If any section, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining sections, sentences, clauses, phrases, or portions of this Ordinance shall nonetheless remain in full force and effect. The City Council of the City of Auburn hereby declares that it would have adopted each section, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, sentences, clauses, phrases, or portions of this Section be declared invalid or unenforceable and, to that end, the provisions of this Section are severable.

ARTICLE 2 TAXES: GROSS RECEIPTS

Sec. 33.025. Rates: Reclassifications:

(a) Rates: Every person who engages in business at a fixed place of business with the City, except for the business otherwise specifically provided for in this article and in Article 3 of this chapter, shall pay a license tax based upon gross receipts at the following rates in the following classifications:

<u>Annual Gross Receipts</u>	<u>Lettered Class Symbol</u>	<u>License Tax per year</u>
Under \$ 15,000	A	\$27.50
\$ 15,001 - \$ 25,000	B	\$33.00
\$ 25,001 - \$ 50,000	C	\$44.00
\$ 50,001 - \$100,000	D	\$66.00
\$100,001 - \$200,000	E	\$110.00
\$200,001 - \$500,000	F	.55 for each \$1,000
Over \$500,000	G	\$275.00 plus .11 for each 1,000 over 500,000

Downtown Business Improvement District

Basis of Assessment

The Downtown Business Improvement District (BID) assessment is based on 100% of the annual City of Auburn Business License Fee with a \$50 minimum and a \$500 cap.

EXAMPLES: For a Downtown Business currently paying \$50.00 for an Auburn business license, the BID assessment would additionally be \$50.00 per year. The combined total being \$100.00.

For a Downtown Business currently paying \$27.50 for an Auburn business license, the BID assessment minimum would additionally be \$50.00 for a combined total of \$77.50.

For a Downtown Business currently paying \$800.00 for an Auburn business license, the BID assessment cap would additionally be \$500.00 for a combined total of \$1,300.00.

Activities and Improvements

These assessed funds will be used to promote and enhance the Business Improvement District of Downtown Auburn. The budget includes the flower pot landscape maintenance and its enhancement and replacement, billboard and general advertising to residents and tourists, holiday decoration, signage, music and special projects approved by the Downtown Business Association.

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